

Appl. No. 09/980,330  
Atty. Docket No 7596  
Amdt. dated April 6, 2005  
Reply to Office Action of January 19, 2005  
Customer No. 27752

### REMARKS

#### Claim Status

Claims 1 - 10 are pending in the present application and stand rejected.

#### Rejection Under 35 USC §102 (b)/103a) Over WO 97/45259

Claims 1-10 stand rejected under 35 USC § 102(b) as clearly anticipated by or, in the alternative, under 35 USC § 103(a) as obvious over WO 97/45259 (hereinafter PCT '259). The Office Action asserts that the claims are product by process claims further asserting that the claim limitations are drawn to test results, the Office Action further uses these assertions to contend that the Office bears a lesser burden of proof in support of a *prima facie* case of obviousness. The Office Action then goes on to contend that:

Carroll discloses the same materials that applicant has indicated are used as the film coated fibrous non-woven composite sheet. In as much, the teachings of Carroll provide all that is claimed in the instant application. In the alternative, it would have been obvious to have provided the material that meets the required test characteristics since applicant has not provided any most favorable product for use as the composite sheet or provided ally proof that one of the many possible products is required to make the invention operable.

The Office Action also asserts:

Carroll discloses an absorbent article having an absorbent core, a topsheet, and a backsheet wherein the backsheet is formed from a moisture vapor permeable, substantially liquid impermeable composite sheet material (p. 5, lines 11-14) having a peel strength of at least 0. 1N/cm and moisture vapor transmission rate of at least 1000g/m<sup>2</sup>/24hr (p. 2, lines 29, 31) substantially free of pinholes (p. 6, line 20) such that substantially no liquid passes through the sheet when tested according to the liquid seepage test (p. 12, line 34) and preventing passage of microbes when tested according to ISO 11607 standard for sterile packaging materials (p. 13, lines 27-28); the composite sheet material comprising two fibrous nonwoven polymer (p. 7, lines 31-32 and p. 8, lines 17-20) web substrates (fig. 2: 14, 16) bonded (p. 7, line 10; p. 15, lines 28-38 to p. 16 lines 1-24) to moisture vapor permeable (MVP) thermoplastic film (p. 8, lines 27-30) said film comprising one or multiple layers wherein each of the film layers comprises different thermoplastic polymer compositions (p. 5, lines 17-19, 21) as is well known in the composite sheet art (p. 10, line 34)

Carroll further discloses the fibrous substrates may be carded web (p 15, line 23) of compatible and incompatible fibers (p 14, line 1 to p. 15, lines 1-21) held together by a binder in order to bind the fibers in the web into a low-

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lenting strong matrix, such material known in the art as powder-bonded carded web (PBCW) and commercially available from HDK Industries, Inc. having an office at 304 Arcadia Drive, Greenville S.C. 29609.

Carroll discloses all that is claimed in the instant application and clearly contemplates diverse constructions and orientations of the fibrous webs and film layers (p. 33, lines 11-24) but does not expressly disclose abutting the two fibrous webs to each other. However, to have abutted the two fibrous webs to each other rather than sandwiching the film layer in order to impart a softer more fabric-like texture to the outer cover of the diaper would have been obvious to one having ordinary skill in the art at the time the invention was made since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86

Rejection Under 35 USC §102 (b)

With respect to the rejection under 35 USC § 102(b), the Applicants respectfully point out that, in order to anticipate, a reference must teach or disclose all of a claim's limitations. The Applicants also direct the Examiner to Claim 1 and submit that PCT '259 fails to teach or disclose at least the following claim limitations.

- *the first side of said second fibrous nonwoven web abutting the second side of said first fibrous nonwoven web*—While, as noted in the Office Action, Fig. 2 of PCT '259 provides evidence of a structure with two nonwoven layers, it totally fails to teach or disclose two nonwoven layer having sides that abut each other. Page 7, lines 31 and 32, also cited in the Office Action, merely says that a preferred polymer for the two nonwoven layers 14 and 16, shown in Fig. 2 to lie on opposite sides of the film layer, is polypropylene.
- *said first and second fibrous nonwoven webs each being powder-bonded webs*—As evidenced by an electronic word search of a downloaded copy of the text of PCT '259, there is no discussion whatsoever of the term "powder bonded web" or powder bonded nonwoven structures therein. Further there is no mention of any supplier of such webs.
- *the description of the fiber composition of the two nonwoven webs*—As evidenced by an electronic word search of a downloaded copy of the text of PCT '259, the term "adhesive" is only used in the context of joining the film and substrate layers (In particular, the discussion relates to how the structures of PCT '259 can be formed without the use of adhesive means). There is no discussion or suggestion of

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adhesively bonding the fibers of a nonwoven structure using adhesive means. Substrates 14 and 16 are discussed in PCT '259 at page 7, line 30 to page 8, line 20. As described therein, the preferred polyolefin materials are either spunbonded or carded *thermally bonded* materials. As would be recognized by one of ordinary skill, neither of these structures comprises fibers having any compatibility relationship with a powder adhesive because such structures do not rely on adhesive bonding to provide strength thereto.

Given that the Applicants have shown that PCT '259 fails to teach or disclose all of the limitations of Claim 1 of the present application and given further that Claims 2-10 depend from Claim 1 having all the limitations of the base claim, the Applicants submit that PCT '259 fails to anticipate Claims 1-10. Therefore, the Applicants respectfully request reconsideration and withdrawal of the rejection of Claims 1-10 under 35 USC § 102(b) over PCT '259.

Rejection Under 35 USC §103(a)

The Applicants are unclear regarding the basis for the assertion in the Office Action that the claims of the present application are product by process claims. Even a cursory review of Claim 1 makes it clear that the claim is substantially structural in nature. The only numeric limitation relates to the percentage of compatible fibers in the various nonwoven layers. Therefore, the Applicants submit that the Office Action fails to provide a rationale showing that the claimed product is the same or similar to the prior art and that the assertion that the present claims are product by process claims is improper. The Applicants further submit that the Office is not entitled to a lesser burden of proof in establishing a *prima facie* case of obviousness.

With respect to establishing a *prima facie* case of obviousness, the Office Action fails to do so with respect to Claim 1 because it fails to establish at least two of the three required criteria. To establish a *prima facie* case of obviousness, the Examiner must first prove that there is some suggestion or motivation either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings. See, for example, *In re Fine*, 837 F.2d 1071, (Fed. Cir. 1998), and *In re Jones*, 958 F.2d 347, (Fed. Cir. 1992). Second, there must be a reasonable expectation of success. And finally, the prior art reference, (or references

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when combined) must teach or suggest all of the claim limitations. See, for example, *In re Veack*, 947 F.2d 488, (Fed. Cir. 1991). The Applicants respectfully submit that the Office Action Fails to meet this burden for at least the following reasons:

- The Office Action fails to show that PCT '259 teaches or suggests all of the claim limitations. Specifically, the Office Action fails to teach or suggest at least those limitations discussed above with respect to the rejection of Claims 1–10 under 35 USC § 102(b). The Applicants respectfully submit that they have shown there that PCT '259 fails to teach or suggest the presently claimed inventions. If anything, FIG. 2 of PCT '259 teaches away from the presently claimed invention by teaching that the film layer is disposed between two nonwoven layers when two nonwoven layers are present. The Office Action asserts that the claimed structure is an obvious design choice over the disclosure of PCT '259. The Applicants respectfully disagree. The Applicants respectfully direct the Examiner to page 9, lines 9–24. As described therein the claimed structure provides discrete bonding sites between the second nonwoven layer and the film layer while, at the same time, overcoming the reduced nonwoven strength that would result if the nonwoven layer solely comprised a fibrous composition similar to that of the second nonwoven layer. As also discussed at page 9, lines 9–24, the first nonwoven layer provides the requisite strength because of the good compatibility between the fibrous structure therein and the powder adhesive. The good adhesive bonding between the first and second nonwoven layers should also be noted.
- There is no reasonable expectation of success in achieving a moisture permeable, substantially liquid impermeable web having the softness and strength of the webs of the present invention by relying on the teachings and suggestions of PCT '259. The Applicants respectfully direct the Examiner to page 15, lines 6–28 of PCT '259. The Applicants submit that the discussion therein clearly indicates that PCT '259 is solely directed to insuring adequate bond strength between the substrate layer and the film layer of the laminate. This focus becomes even more clear at page 16, lines 10–24 which describes methods to maximize bonding. There is no recognition or suggestion in PCT '259 that the presently claimed multi-layer fibrous substrate where the second fibrous layer which is in direct contact with the film layer has a

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relatively low concentration of compatible fibers so as to provide discrete bonding sites that are sufficient for peel strength but provide improved softness while the first fibrous layer has a high concentration of adhesive compatible fibers to provide tensile strength and low linting (page 9, lines 9-24).

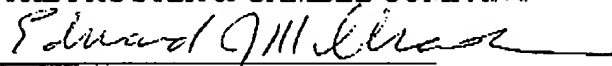
Given that the Applicants have shown that the Office Action fails to establish a *prima facie* case of obviousness with respect to Claim 1 and given further that Claims 2-10 depend from Claim 1 having all the limitations of the base claim, the Applicants respectfully request that the Examiner reconsider the rejection of Claims 1-10 under 35 USC 103(a) over PCT '259 and withdraw it.

#### Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 USC § 102(b) and 35 USC § 103(a). Early and favorable action in the case is respectfully requested. This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied reference. In view of the foregoing, reconsideration of this application and allowance of Claims 1-10 is respectfully requested.

Respectfully submitted,

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